

## REMARKS

Please note the new Attorney Docket Number 176630, replacing old Attorney Docket Number 033323-002.

Claims 1-21 are pending and rejected. Claims 1, 8, 9, 11 and 12 are amended to correct typographical errors and clarify the subject matter which is claimed. Claims 7 and 18 are canceled. Specifically, claims 1 and 12 incorporate subject matter from canceled claims 7 and 18. Consequently, these amendments should be entered. Claim 8 is amended to properly rephrase the first step as “identifying,” claim 9 is amended to remove extraneous text and claim 11 is amended to properly rephrase the second step as “setting.” All of these amendments are made to expedite allowance of the case and no range of equivalents is intended to be surrendered by this Amendment. No new matter is added.

The Office Action of June 7, 2007 (the “Office Action”) is improperly final because it does not meet the requirements for a *prima facie* rejection of claims 8-21. Rather, the Office Action merely states that “claims 8-21 are substantially similar to claims 1-7 and therefore are unpatentable as obvious [sic] in view of the rejection of claims 1-7.” This is not a sufficient showing of obviousness for a *prima facie* rejection. To establish a *prima facie* case of obviousness...the prior art reference (or references when combined) must teach or suggest all of the claim limitations. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) and MPEP § 2142. The Office Action merely concludes that because claims 8-21 are “substantially similar” they are “obvious.” Even if we accept that claims 8-21 are substantially similar, this is not, by itself grounds for concluding that claims 8-21 are obvious. If claims 8-21 are substantially similar, they are inherently and necessarily different, and the Office Action has not shown how all the claim limitations of claims 8-21, including the different claim limitations, are taught or suggested by Forsythe and Hoyt.<sup>1</sup> Indeed, all of claims 8-21 are not substantially similar to claims 1-7. If the Examiner determines that a restriction requirement is required, he is respectfully invited to make one in a new, non-final office action. Otherwise, the Examiner must provide a *prima facie* rejection of claims 8-21, in a non-final office action, or allow claims 8-21.

Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forsythe in view of Hotz. Applicants respectfully traverse this rejection.

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<sup>1</sup> In fact, the Office Action cannot make this showing because the references alone or combined do not teach or suggest all of the claim limitations of claims 8-21, as discussed below.

As noted above, to establish a *prima facie* case of obviousness...the prior art reference (or references when combined) must teach or suggest all of the claim limitations. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) and MPEP § 2142. Forsythe and Hotz do not teach or suggest all of the claim limitations of claims 1-21.

For example, Forsythe and Hotz do not teach or suggest:

a revenue maximization system which determines a price for said units based on predetermined pricing considerations wherein the revenue maximization system utilizes economic factors which influence demand and various measurement noises are filtered out of these economic factors,

as recited in independent claims 1 and 12. Forsythe teaches only that a “media outlet employee” determines price: “media outlet employee for each media outlet then goes to the rate submission page on the Web site, fills out the rate submission form and submits it to the System through the Web site 124 (FIGS 1 and 4),” col. 6, lines 60-64. First, the media outlet employee of Forsythe is not a revenue maximization system. Second, there is no disclosure in Forsythe of “various measurement noises are filtered out of these economic factors.” All that Forsythe discloses is that the media outlet employee determines price. Nothing in Hotz cures Forsythe of this defect. Consequently, Forsythe and Hotz fail to teach or suggest all claim limitations of claims 1 and 12 and these claims are, therefore, allowable.

Dependent claims 2-6 and 13-18 are allowable for these same reasons and their own independent patentable features. For example, Forsythe and Hotz do not teach or suggest “wherein the revenue maximization system manages yield by using the functions of sell-out forecasting, revenue forecasting, fuzzy rules, and pricing adjustment,” as recited in claims 5 and 16. Even if the functions of sell-out forecasting, revenue forecasting, fuzzy rules, and pricing adjustment are described in the Background or elsewhere of Forsythe as asserted by the Examiner, Forsythe does not teach or suggest a revenue maximization system managing yield by using these functions. Forsythe does not even suggest the media outlet employee, who determines prices in Forsythe, using these functions to manage yield. Hotz does not cure this defect. Therefore, at least for this additional reason, claims 5 and 16 are allowable.

Likewise, Forsythe and Hotz do not teach or suggest “wherein said predetermined pricing considerations includes...total number of unsold units, category of buyer attempting to purchase said units, the buyer's history in purchasing similar units, and budget of a seller of the units,” as recited in claims 3 and 14. An indication of the advertiser's currently used media, as provided

on the Smart Form of Forsythe, is not “the buyer’s history in purchasing similar units.” A buyer’s history necessarily includes more than what is currently being used by the buyer. Moreover, the buyer may not have even purchased what is currently being used. Therefore, at least for this additional reason, claims 3 and 14 are allowable.

Forsythe and Hotz also do not teach or suggest “setting appropriate filters to filter out media within the selected markets using criteria selected from a group consisting of demographics, psycho graphics and media type,” as recited in claim 11. Forsythe does not contain any teaching or suggestion of filtering out media, let alone setting appropriate filters to filter our media using criteria selected from a group consisting of demographics, psycho graphics and media type. Indeed, the Office Action contains no allegation or description of how Forsythe teaches or suggests this feature. Hotz does not cure Forsythe of this defect. Consequently, claim 11 is not rendered obvious by Forsythe and Hotz and is, therefore, allowable.

Forsythe and Hotz also do not teach or suggest “obtaining the history of the buyer with respect to purchases of like advertisement units, if any,” as recited in claim 19. As noted above, the currently used media is not the history of the buyer with respect to purchases of like advertisement units. Definitions of “history” from Webster’s II New College Dictionary include a “narrative of past events” and “events and details forming the subject matter of history.” Clearly, a history necessarily involves more than what is current. Moreover, media currently being used is not an indication of like advertisement units, but merely the media on which advertisement units are being placed. Finally, as noted above, currently used media may not have even been purchased. Hotz does not cure Forsythe of this defect. Consequently, claim 19 is not rendered obvious by Forsythe and Hotz and is, therefore, allowable.

Dependent claims 20-21 are allowable for these same reasons and their own independent patentable features.

Applicants respectfully request that the Examiner re-consider the claims and withdraw the rejections.

## CONCLUSION

Applicants respectfully submit that the application is in condition for allowance. Therefore, Applicants respectfully request that a timely Notice of Allowance be issued in this application.

If the Examiner believes that a personal or telephonic interview would be of value in expediting the prosecution of this application, the Examiner is hereby invited to telephone the undersigned counsel to arrange for such a conference.

Respectfully submitted,

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